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February 22, 2022

Hon. Arlene R. Lindsay
United States Magistrate Judge
United States Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: *United States v. Aventura Technologies, Inc.*
Dkt.: 19-Cr-582 (DRH)(ARL)

Dear Judge Lindsey:

Defendant Aventura Technologies, Inc. ("Aventura") hereby submits this opposition to the Government's request for Leave to File a Sur-reply to Aventura's motion for a hearing pursuant to *Kaley v. United States*, ***. Since the Government wrote its answer in September, 2021, there have been no substantive changes in the law or facts upon which the motion is to be heard. The Government had a full and fair opportunity to answer the original moving papers (six weeks) and to raise all the relevant issues to its defense. Aventura, as is the movant's right, submitted a reply to address factual inaccuracies in the Government's answer and correct statements of law. Aventura raised no new issues in its reply, only clarified the record. There is nothing now the Government needs to state that it cannot do at the hearing and/or has in fact already stated. The Government's letter request did not identify any issue to be briefed and grounded its request only on the time between filings (which raises no legal issue at all and the timing of the filings violated no schedule set by any court).

As discussed in Aventura's original motion, the facts and circumstances of the seizure of the corporate assets are not in dispute. The testimony of witnesses and the arguments of counsel at the hearing will be what this Court needs to decide the motion.

Sur-replies are disfavored because each side, given a fair opportunity to state its case, should be bound by its submission, and by such practice redundancies and continuances can be avoided. Sur-replies are meant to provide the moving party with the opportunity to respond to

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matters that could not have been raised in the movant's opposition brief, a situation not encountered here. (See, e.g., *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001) ("The standard for granting a leave to file a sur-reply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply"). A sur-reply is inappropriate concerning arguments and materials that expand upon claims already made in the original motion. (*See, e.g., Simms v. Ctr. for Correctional Health and Policy Studies*, 794 F. Supp. 2d 173, (D.D.C. 2011).) In *Simms*, the Court explained that defendant's reply did not contain any material that went "beyond the parties dispute as framed by the [original] motion and plaintiff's opposition." Id. at n.7 (See also *Crummey v. Soc. Sec. Admin.*, 794 F. Supp. 2d 46, 62 (D.D.C. 2011).)

Further, the Federal Rules of Civil Procedure, the local rules of the Eastern District of New York, as well as the individual practice rules of Hon. Denis R. Hurley, USDJ, and this Court, all either disfavor sur-replies or offer no grounds for their submission. A matter is generally held to be fully submitted with the filing of the movant's reply papers.

Finally, if there were a Supreme Court or Second Circuit opinion that changed the law on this issue *and* was released between September, 2021 and today, the parties would always be at liberty to update the Court without leave of the Court. This, however, is not the case. Therefore, the Government's request for a sur-reply should be denied.

Respectfully submitted,

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Cc: Counsel for the parties (Via ECF)